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10/676,593	10/01/2003	Ronald L. Brookshire	1088.008	7971

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EXAMINER

KRECK, JOHN J

ART UNIT	PAPER NUMBER
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3673

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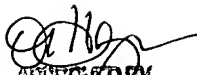
GROUP 3600

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/676,593
Filing Date: October 01, 2003
Appellant(s): BROOKSHIRE ET AL.

Brookshire, et al.
For Appellant

EXAMINER'S ANSWER


APPROVED BY
RONALD T. HAJEC
DIRECTOR, TECHNOLOGY CENTER 3600

This is in response to the appeal brief filed 23 February 2005 appealing from the Office action mailed 14 October 2004.

ATTACHMENT: PTO-892

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

It is noted that claim 15 includes language "battery means for powering" and "solar power means for recharging". These limitations have not been construed as means-plus-function under 35 USC 112 6th paragraph, since the terms "battery" and "solar power" preceding "means for" impart structure to the phrase. Appellant did not provide any identification of the corresponding structure for these limitations as required by 37 CFR 41.37(c)(1)(v):

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“every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.”

If it is deemed that these limitations are to be construed under the provisions of 35 USC 112 6th paragraph; then they are identified below:

“battery means for powering”: Page 4, lines 16 and 17; reference number 38. It is noted that a lead acid battery is disclosed.

“solar power means for recharging”: Page 4, lines 21 and 22; reference number 46. It is noted that an array of solar cells is disclosed.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection is substantially correct; the changes are as follows: NEW GROUNDS OF REJECTION for claims 6, 8, 11, 16, and 20 are set forth in section (9); and are summarized below:

Claims 6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Adkins, II (U.S. Patent number 5,131,888) in view of Staler, et al. (U.S. Patent number 4,453,119). This supersedes the previous grounds of rejection set forth in (6)(b) of Appellant's brief.

Claims 11, 16, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Longo, Sr. (U.S. Patent number 5,857,807) and Adkins, II (U.S. Patent number 5,131,888) and further in view of Staler, et al. (U.S. Patent number 4,453,119). This supersedes a portion of the previous grounds of rejection set forth in (6)(d) of Appellant's brief.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 1-3, and 7 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Adkins, II (United States Patent number 5,131,888).

Adkins shows the fan module; at least one fan (12) in the module; at least one battery (18); and solar panel (15). Adkins also shows the fan pipe ("housing") and flanges. Adkins fails to explicitly disclose the fan disposed between the flanges as called for in claim 1. It is noted that Adkins discloses that reference number 13 designates an "exhaust fan housing" with flanges at either end. The accepted meaning of the term "housing" indicates that the fan should be located within; thus it is believed that Adkins intends for the fan to be between the flanges; alternatively, it would have been obvious to one of ordinary skill in the art at the time of the invention to have made

the fan between the flanges, so that the housing (i.e. flanges) would protect the fan from damage.

Adkins also shows the DC fan as called for in claim 2.

Adkins also shows the axial fan as called for in claim 3.

Adkins also shows the array as called for in claim 7.

NEW GROUND(S) OF REJECTION claims 6 and 8

2. Claims 6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Adkins, II (U.S. Patent number 5,131,888) in view of Staler, et al. (U.S. Patent number 4,453,119).

Adkins discloses a rechargeable 12 V DC battery and solar charger, but fails to explicitly disclose the lead acid battery and the voltage controller electrically disposed between the battery and solar panel. It is noted that Adkins fails to disclose the nature of the electrodes and electrolyte in the battery; using the generic term "battery"

Staler teaches that a voltage controller electrically disposed between the battery and solar panel is desirable, in order to keep the voltage on the battery constant as output from the solar panel fluctuates. Staler also teaches 12V lead acid batteries are well known (e.g. col. 3, lines 21-23).

Regarding claim 6; in light of Staler's teaching that lead-acid batteries are well known; it would have been obvious to one of ordinary skill in the art at the time of the invention to have used a lead acid battery with the Adkins device, since Adkins fails to disclose any specific battery type.

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Regarding claim 8; in light of Staler's teaching that voltage controllers are desirable between solar panels and batteries; it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the Adkins device to have had a voltage controller; in order to keep the voltage on the battery constant as output from the solar panel fluctuates.

3. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Adkins in view of any one of Finley (United States Patent number 776,310); West (United States Patent number 349,549) or Bates (United States Patent number 98,833).

Adkins fails to show the support rod. Such support rods are well known and old as evidenced by the cited patents; they are used to strengthen the joint and reduce the number of nuts required. It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the Adkins device to have a support rod as called for in claim 5.

4. Claims 9, 12, 13, 14, 15, 17, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Longo, Sr. (United States Patent number 5,857,807) in view of Adkins.

Longo teaches the process of extracting gas from a landfill which uses a well pipe and fan.

Adkins teaches a fan module process which includes the steps of energizing and recharging. The Adkins fan is advantageous in that it is inexpensive and portable. It

would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the Longo process to have included installing a fan module in the well, energizing the fan, and recharging the battery as called for in claim 9; since the fan module and solar cell are inexpensive and portable.

Adkins teaches an axial fan as called for in claim 12.

With regards to claim 13; the rate of gas production is deemed to be a matter of engineering design: it would have been obvious to one of ordinary skill in the art at the time of the invention to have operated the fan such that gas would exhaust at 40scfm.

Adkins teaches maintaining 12 volts DC as called for in claim 14.

Regarding independent claim 15:

Longo teaches a system including fan means in communication with a landfill well. Longo fails to teach the battery and solar power means.

Adkins teaches a fan system including battery and solar power. The Adkins fan is advantageous in that it is inexpensive and portable.

It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the Adkins process to have battery means and solar means as called for in claim 15; since the fan module with battery and solar cell are inexpensive and portable.

Adkins teaches the axial fan as called for in claim 17.

Adkins teaches the pipe and flanges as called for in claim 18.

NEW GROUND(S) OF REJECTION claims 11, 16, and 20

5. Claims 11, 16, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Longo, Sr. (U.S. Patent number 5,857,807) and Adkins, II (U.S. Patent number 5,131,888) and further in view of Staler, et al. (U.S. Patent number 4,453,119).

Adkins discloses a rechargeable 12 V DC battery and solar charger, but fails to explicitly disclose the lead acid battery and the voltage controller electrically disposed between the battery and solar panel. It is noted that Adkins fails to disclose the nature of the electrodes and electrolyte in the battery; using the generic term "battery"

Staler teaches that a voltage controller electrically disposed between the battery and solar panel is desirable, in order to keep the voltage on the battery constant as output from the solar panel fluctuates. Staler also teaches 12V lead acid batteries are well known (e.g. col. 3, lines 21-23).

Regarding claim 11; in light of Staler's teaching that lead-acid batteries are well known; it would have been obvious to one of ordinary skill in the art at the time of the invention to have used a lead acid battery, since Adkins fails to disclose any specific battery type.

Regarding claim 16; in light of Staler's teaching that lead-acid batteries are well known; it would have been obvious to one of ordinary skill in the art at the time of the invention to have used a lead acid battery, since Adkins fails to disclose any specific battery type.

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Regarding claim 20; in light of Staler's teaching that voltage controllers are desirable between solar panels and batteries; it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the Adkins device to have had a voltage controller; in order to keep the voltage on the battery constant as output from the solar panel fluctuates.

6. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Longo and Adkins and further in view of any one of Finley (United States Patent number 776,310); West (United States Patent number 349,549) or Bates (United States Patent number 98,833)

Adkins fails to show the support rod. Such support rods are well known and old as evidenced by the cited patents; they are used to strengthen the joint and reduce the number of nuts required. It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the Adkins device to have a support rod as called for in claim 19.

(10) Response to Argument

(a) Claim 1 rejected under 35 USC 102 over Adkins II.

Appellant asserts that claim 1 recites structure that is not taught in Adkins: that "the fan module is configured for engaging a landfill well" (brief section 7a, third paragraph). This language is not found in any claim. The closest limitation is "the fan module configured for communicating with methane" (see claim 1, line 2). Appellant

has not identified any structure absent from the Adkins reference which makes the fan module "configured" as claimed. The claims are given their broadest reasonable interpretation: the limitations drawn to "landfill gas extraction system"; "for communicating with methane in the landfill"; and "for mating with respective flanges of a landfill well" are given weight as intended use only. It is noted that appellant did not raise this argument previously in prosecution.

With regards to the limitation "the fan being disposed between the flanges"; appellant has argued that the fan shown by Adkins is not between the flanges. This flies in the face of figures 1 and 2 of Adkins, which do not show the fan coplanar with the flange. Figure 2 of Adkins plainly shows that the fan does not extend past the upper flange; therefore, the fan can either be "coplanar with the flange" (as asserted by appellant) or between the flanges. Flanges, such as shown at 13" in Adkins, are thin and planar. Fans, such as shown at 12 in Adkins, are neither planar nor thin. To accept that the fan is coplanar with the flange, and not between the flanges; one must assume a very thin fan, perfectly aligned with the flange.

(b) Claims 9 and 15 rejected under 35 USC 103 over Longo, Sr. in view of Adkins II.

Appellant has argued that the prior art fails to motivate "inexpensive and portable" fans for use in landfills. It is noted that although Longo, sr. teaches a blower in a landfill well, the reference fails to disclose any structure for the blower. One of ordinary skill in the art would have found it obvious to use a fan system as shown by

Adins, based on Adkins teaching that "Another objects of the invention is to provide a solar exhaust fan which is inexpensive and easy to fabricate." (col. 2, line 22)

Assuming, arguendo, that one of ordinary skill in the art would not be motivated to find a "portable" fan for landfill use; it defies logic to assert that one would not be motivated to find an "inexpensive" or "easy to fabricate" fan [it is also observed that the fan has to be put on the landfill somehow; and thus must be transported...a portable fan would seem to be required].

Appellant has asserted that "only the present invention has made the critical observation...landfills may lack the electrical infrastructure..." (brief (7)(b) fourth paragraph); however, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

(c) Claim 1 rejected under 35 USC 103 over Adkins II.

Appellant has made no substantive arguments nor provided any evidence concerning the obviousness of mounting the fan of Adkins between the flanges.

(d) Claim 6 and 8 rejected under 35 USC 103 over Adkins II; now over Adkins in view of Staler.

Appellants arguments are largely moot in view of the new grounds of rejection. It is noted that appellant has argued that official notice was taken "*of 12 volt batteries and of voltage regulators*" (brief (7)d)). Official notice was taken of "lead acid" batteries and "voltage controllers". 12 volt batteries are explicitly disclosed by Adkins. The Staler reference provides evidence that lead acid batteries and voltage controllers are well known and desirable. Appellant has argued that there is no suggestion in the prior art to use a lead-acid battery. Since Adkins fails to teach the type of 12 volt battery, it would have been obvious to one of ordinary skill in the art at the time of the invention to have used any common 12V battery. Staler provides evidence that lead acid 12V batteries are common. Appellant has argued that there is no suggestion in the prior art to use a voltage controller. The suggestion is found in Staler; where it is disclosed that it is desirable to keep the voltage levels constant.

(e) Claim 5 rejected under 35 USC 103 over Adkins II in view of any one of Finley, West, or Bates.

Appellant has argued that there is no suggestion to use support rods with the system shown by Adkins. The motivation to use such rods was stated in the rejection: "*to strengthen the joint and reduce the number of nuts required*". It is believed that a prima facie case of obviousness has been met. Appellant has failed to provide any evidence of non-obviousness.

For the above reasons, it is believed that the rejections should be sustained.

This examiner's answer contains a new ground of rejection set forth in section (9) above. Accordingly, appellant must within **TWO MONTHS** from the date of this answer exercise one of the following two options to avoid *sua sponte* **dismissal of the appeal** as to the claims subject to the new ground of rejection:

(1) **Reopen prosecution.** Request that prosecution be reopened before the primary examiner by filing a reply under 37 CFR 1.111 with or without amendment, affidavit or other evidence. Any amendment, affidavit or other evidence must be relevant to the new grounds of rejection. A request that complies with 37 CFR 41.39(b)(1) will be entered and considered. Any request that prosecution be reopened will be treated as a request to withdraw the appeal.

(2) **Maintain appeal.** Request that the appeal be maintained by filing a reply brief as set forth in 37 CFR 41.41. Such a reply brief must address each new ground of rejection as set forth in 37 CFR 41.37(c)(1)(vii) and should be in compliance with the other requirements of 37 CFR 41.37(c). If a reply brief filed pursuant to 37 CFR 41.39(b)(2) is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the primary examiner under 37 CFR 41.39(b)(1).

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Extensions of time under 37 CFR 1.136(a) are not applicable to the TWO MONTH time period set forth above. See 37 CFR 1.136(b) for extensions of time to reply for patent applications and 37 CFR 1.550(c) for extensions of time to reply for ex parte reexamination proceedings.

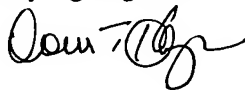
Respectfully submitted,

JJK 14 March 2005



JOHN KRECK
PRIMARY EXAMINER

A Technology Center Director or designee must personally approve the new ground(s) of rejection set forth in section (9) above by signing below:



Conferees:

John Kreck



Heather Shackelford



Thomas Will

